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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/750,433

12/30/2003

Michael R. Clark

31419.23990

1979

26781

7590

10/13/2006

BROUSE MCDOWELL LPA  
388 SOUTH MAIN STREET  
SUITE 500  
AKRON, OH 44311

EXAMINER

LUONG, VINH

ART UNIT

PAPER NUMBER

3682

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/750,433	Applicant(s) CLARK ET AL.	
	Examiner Vinh T. Luong	Art Unit 3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/30/03 & 7/10/06 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



**Vinh T. Luong**  
Primary Examiner

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Attachments 1-4</u> .                  |

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1. Applicant's election of Group I and the species of Figs. 12-20 in the reply filed on September 21, 2006 and October 5, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse. MPEP § 818.03(a).

2. Claims 6, 7, 21, and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and/or species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 21, 2006 and October 5, 2006.

Claim 7 is dependent upon the withdrawal claim 6. Therefore, claim 7 is withdrawn therewith.

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because of the legal phraseology "means." Correction is required. See MPEP § 608.01(b).

5. The drawings were received on July 10, 2006. These drawings are not accepted by the Examiner because of the reasons, e.g., listed below:

(a) The drawings are inconsistent with the specification. See 37 CFR 1.121(e).

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For example, paragraph [0058] of the specification describes the plastic pedal body 10, however, Figs. 18 and 19 show that the body 10 is made of metal in accordance with the drawing symbols for draftsman in MPEP 608.02; and

(b) The lead lines for the central axis CA in, e.g., Fig. 18 are not extended to the *central* axis as described in paragraph [0059]. Note that 37 CFR 1.84(q) requires that the lead lines must originate in the immediate proximity of the reference character and extend to the feature indicated. Here, the lead lines are extended outside of the center of the weight 72.

6. The drawings are objected to because of the reasons, e.g., listed below:

(a) The drawings are inconsistent with the specification. See 37 CFR 1.121(e).

For example, paragraph [0058] of the specification describes the plastic pedal body 10, however, Figs. 18-20 show that the body 10 is made of metal in accordance with the drawing symbols for draftsman in MPEP 608.02; and

(b) The lead lines for the central axis CA in Figs. 18 and 19 are not extended to the *central* axis as described in paragraph [0059]. See 37 CFR 1.84(q).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

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renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

7. Claims 3 and 15 are objected to because of the following informalities: no antecedent basis is seen for the terms "the arch" in claim 3 and "it" in claim 15. Appropriate correction is required.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-5, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitsuo (Japanese Utility Model # 1-115793 cited by Applicant).

Regarding claim 1, Mitsuo teaches an apparatus 1, comprising: a reversible pedal body 9, 10 having first and second surfaces (at C and 9 in Fig. 4. See Attachment 1), wherein said first surface (C) is adapted to contact an associated foot B, said second surface (9) is adapted to contact an associated shoe, said reversible pedal body being a single part 9, 10, said pedal body 9, 10 having a front (Att. 1) oppositely disposed from a rear (Att. 1), said pedal body having first and second lateral edges (Att. 1) extending between said front and said rear, said pedal body 9, 10 being operatively connected to an associated exercise device 2-6.

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Claim 1 and other claims below are anticipated by Mitsuo because Mitsuo teaches each positively claimed element and its functional statement. On the other hand, it has long been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138 (CCPA 1946).

Regarding claim 2, said first surface (Att. 1) is curved.

Regarding claim 3, said first surface (Att. 1) further comprises a concave portion (Att. 1) and a convex portion (Att. 1) so as to *substantially* conform to an arch A of the foot B. See English abstract.

Regarding claim 4, said first surface (Att. 1) further comprises: a front edge *substantially* flush with said rear of said pedal body; and a rear edge *substantially* flush with said front of said pedal body 9, 10 as seen in Fig 2.

Regarding claim 5, said front edge (Att. 1) is left or right directional.

Regarding claim 12, Mitsuo teaches a foot pedal for an exercise device, comprising: a reversible pedal body 9, 10 having first and second surfaces (Att. 1), wherein said first surface (Att. 1) is adapted to contact an associated foot B, said first surface (Att. 1) being curvilinear, said second surface (Att. 1) is adapted to contact an associated shoe, said pedal body 9, 10 having a front (Att. 1) oppositely disposed from a rear (Att. 1), said pedal body 9, 10 having first and second lateral edges (Att. 1) extending between said front (Att. 1) and said rear (Att. 1), said pedal body 9, 10 being operatively connected to an associated exercise device 2-6.

Regarding claim 13, said first surface (Att. 1) further comprises a rear edge (Att. 1), said first surface (Att. 1) has a concave portion (Att. 1) transitioning into a convex portion (Att. 1).

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10. Claims 1, 8-10, 12, and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Loppnow (US Patent No. 4,809,563).

Regarding claim 1, Loppnow teaches an apparatus 10, 10' comprising: a reversible pedal body 12 having first and second surfaces (at 12 and 14 in Fig. 3. See Attachment 2), wherein said first surface (Att. 2) is adapted to contact an associated foot, said second surface (Att. 2) is adapted to contact an associated shoe (Fig. 9 and 10), said reversible pedal body 12 being a single part 12, said pedal body 12 having a front (Att. 2) oppositely disposed from a rear (Att. 2), said pedal body 12 having first and second lateral edges 20 and 20 (Fig. 5) extending between said front (Att. 2) and said rear (Att. 2), said pedal body 12 being operatively connected to an associated exercise device 22.

Claim 1 and other claims below are anticipated by Loppnow because Loppnow teaches each positively claimed element and its functional statement. On the other hand, it has long been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison, supra*.

Regarding claim 8, said second surface comprises tread (serrated surface) 14'. Ibid. col. 3, lines 30-33.

Regarding claim 9, Loppnow's apparatus further comprises securing means 26 operatively connected to said pedal body 12, wherein said securing means 26 is adapted to rotate substantially 360 degrees around said pedal body 12. See Figs. 9 and 10 and col. 3, line 59 through col. 5, line 30.

Regarding claim 10, Loppnow's apparatus further comprises securing means 26 operatively connected to said pedal body 12, wherein said securing means 26 is adapted to rotate substantially 180 degrees around said pedal body 12.

Regarding claim 12, Loppnow teaches a foot pedal for an exercise device, comprising: a reversible pedal body 12 having first and second surfaces (Att. 2), wherein said first surface (Att. 2) is adapted to contact an associated foot, said first surface (Att. 2) being curvilinear (Att. 2), said second surface (Att. 2) is adapted to contact an associated shoe (Figs. 9 and 10), said pedal body 12 having a front (Att. 2) oppositely disposed from a rear (Att. 2), said pedal body 12 having first and second lateral edges (Att. 2) extending between said front (Att. 2) and said rear (Att. 2), said pedal body 12 being operatively connected to an associated exercise device 22.

Regarding claims 16 and 17, see regarding claims 9 and 8 above.

Regarding claim 18, Loppnow teaches a reversible foot pedal 10, 10', comprising: a pedal body 12 having a first surface (Att. 2) and a second surface (Att. 2) oppositely disposed from said first surface; and securing means 26 operatively connected to said pedal body 12, said securing means 26 adapted to limit movement of an associated foot relative to said pedal body 12, wherein said securing means 26 is adapted to rotate about said pedal body 12 such that an operator can position an associated foot on either said first surface or said second surface to utilize said securing means without removing said securing means 26 from said pedal body 12.

Regarding claim 19, Loppnow's reversible foot pedal further comprises a horizontal plane (passing the axis of rotation of the bolt 18' in Figs. 11 and 12) between said first and second surfaces (Fig. 12 of Att. 2); and at least one weight 16 (Fig. 2) having a central axis (lying on the central, horizontal, bisecting plane of the main pedal portion 12. See Fig. 12 of Att. 2),



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wherein said central axis (Fig. 12 of Att. 2) is displaced from said horizontal plane (Fig. 12 of Att). Note that the spline 16 inherently has a weight since it is inherently subjected to gravitational force exerted by the earth. The weight of the spline 16 urges the center of gravity of the pedal system 10' such that the pedal 10' is normally oriented in its upright state as explicitly described in col. 5, lines 31-40. Therefore, the weight of the spline 16 "reads on" the claimed weight.

Regarding claim 20, said first surface (Att. 2) is adapted to contact an associated foot and said second surface (Att. 2) is adapted to contact an associated shoe. See Figs. 9 and 10.

11. Claims 1, 11, 12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Jean (US Patent No. 4,682,771).

Regarding claim 1, Jean teaches an apparatus comprising: a reversible pedal body 1 having first and second surfaces (at 2 and 1 in Fig. 2. See Attachment 3), wherein said first surface (Att. 3) is adapted to contact an associated foot, said second surface (Att. 3) is adapted to contact an associated shoe, said reversible pedal body 1 being a single part 1, said pedal body 1 having a front (Att. 3) oppositely disposed from a rear (Att. 3), said pedal body 1 having first and second lateral edges (Att. 3) extending between said front (Att. 3) and said rear (Att. 3), said pedal body 1 being operatively connected to an associated exercise device. *Ibid.* col. 1, lines 6-14, and claims 1-12.

Claim 1 and other claims below are anticipated by Jean because Jean teaches each positively claimed element and its functional statement. On the other hand, it has long been held that the recitation that an element is "adapted to" perform a function is not a positive limitation

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but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison, supra*.

Regarding claim 11, Jean's apparatus comprises at least one weight 12 operatively connected to said pedal body 1, such that one of said surfaces faces substantially upwards as said pedal body 1 approaches an equilibrium position.

Regarding claim 12, Jean teaches a foot pedal for an exercise device, comprising: a reversible pedal body 1 having first and second surfaces (Att. 3), wherein said first surface (Att. 3) is adapted to contact an associated foot, said first surface (Att. 3) being curvilinear (Figs. 3 and 7, Att. 3), said second surface (Att. 3) is adapted to contact an associated shoe, said pedal body 1 having a front (Att. 3) oppositely disposed from a rear (Att. 3), said pedal body 1 having first and second lateral edges (Att. 3) extending between said front (Att. 3) and said rear (Att. 3), said pedal body 1 being operatively connected to an associated exercise device.

Regarding claim 14, Jean's foot pedal further comprises at least one weight 12 operatively connected to said pedal body 1.

12. Claims 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Fan (US Patent No. 6,050,154).

Regarding claim 12, Fan teaches a foot pedal for an exercise device, comprising: a reversible pedal body 10 having first and second surfaces (see Attachment 4), wherein said first surface (at 102 in Fig. 3) is adapted to contact an associated foot, said first surface being curvilinear (at the serrations as seen in Fig. 3, Att. 4), said second surface (Att. 4) is adapted to contact an associated shoe, said pedal body 10 having a front (Att. 4) oppositely disposed from a rear (Att. 4), said pedal body 10 having first and second lateral edges (Att. 4) extending between

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said front (Att. 4) and said rear (Att. 4), said pedal body 10 being operatively connected to an associated exercise device (a bicycle).

Claim 1 and claim 15 below are anticipated by Fan because Fan teaches each positively claimed element and its functional statement. On the other hand, it has long been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison, supra*.

Regarding claim 15, said foot pedal comprises a plurality of weights 501 and 40 operatively connected to said pedal body 10 such that one of the surfaces faces substantially upwards as it reaches an equilibrium position. Note that each of the elements 501 and 40 inherently has a weight since each of them is inherently subjected to gravitational force exerted by the earth. The weight of each of the elements 501 and 40 urges Fan's pedal in a vertical position as explicitly shown in Figs. 5-9 and described in col. 1, lines 4-64. Therefore, the elements 501 and 40 are a plurality of weights as claimed.

13. Claims 1 and 12 are rejected under 35 U.S.C. 102(b) as being *clearly* anticipated by Durham (US Patent No. 4,004,468 cited by Applicant).

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1-3, 12, and 13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the single claim of U.S. Patent No. D510,965 S. (hereinafter D'965). Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-3, 12, and 13 of this application are generic claims, thus, these claims 1-3, 12, and 13 read on the species of Figs. 1-8 of this application and Figs. 1-8 of D'965. The single claim in D'965 claims a reversible pedal as shown in Figs. 1-8. It is well settled that drawings and pictures can anticipate claims if they clearly show the structure which is claimed. *In re Mraz*, 173 USPQ 25 (CCPA 1972) and MPEP 2125. Since claims 1-3, 12, and 13 of this application also claim the reversible pedal shown in Figs. 1-8, therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the claimed pedal in claims 1-3, 12, and 13 of this application as clearly shown and claimed in D'965 or *vice versa*.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Nestrud (weight 70), Nutile et al. (securing means 26), and Stillwagon (securing means 15).

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Luong

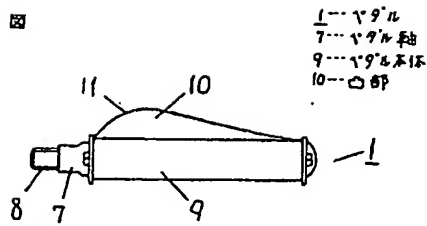
October 12, 2006



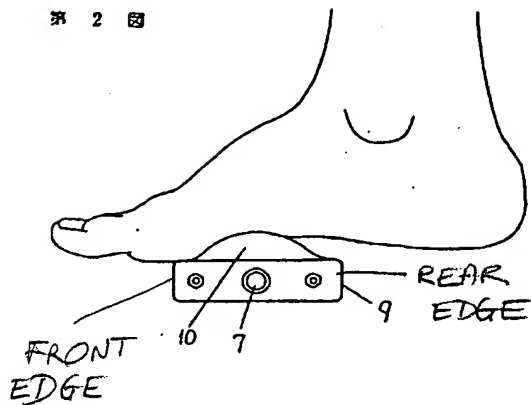
Vinh T. Luong  
Primary Examiner

# **ATTACHMENT 1**

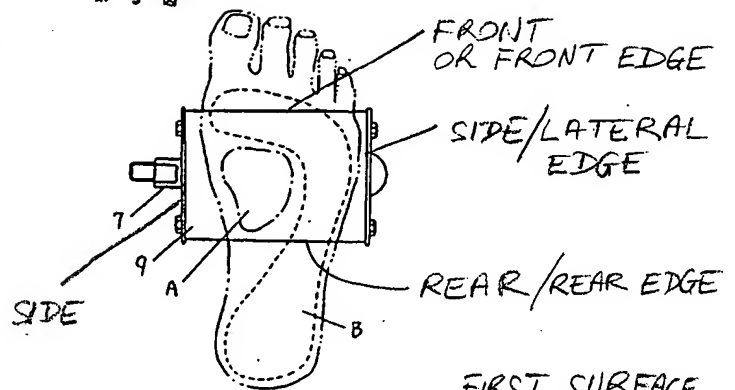
第 1 図



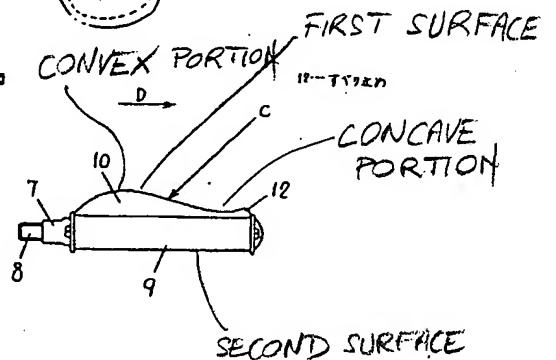
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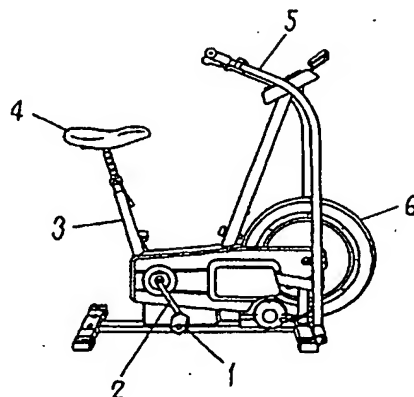
第 3 図



第 4 図



第 5 図



# **ATTACHMENT 2**



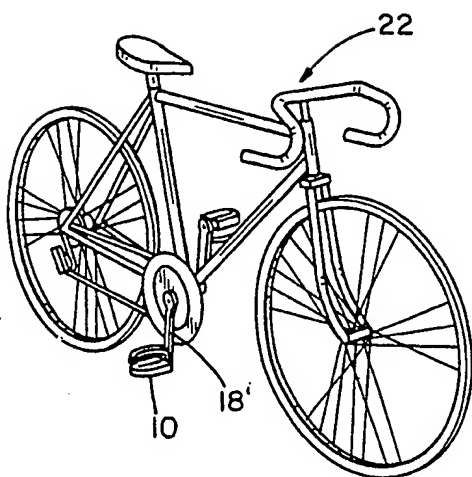


FIG. 1

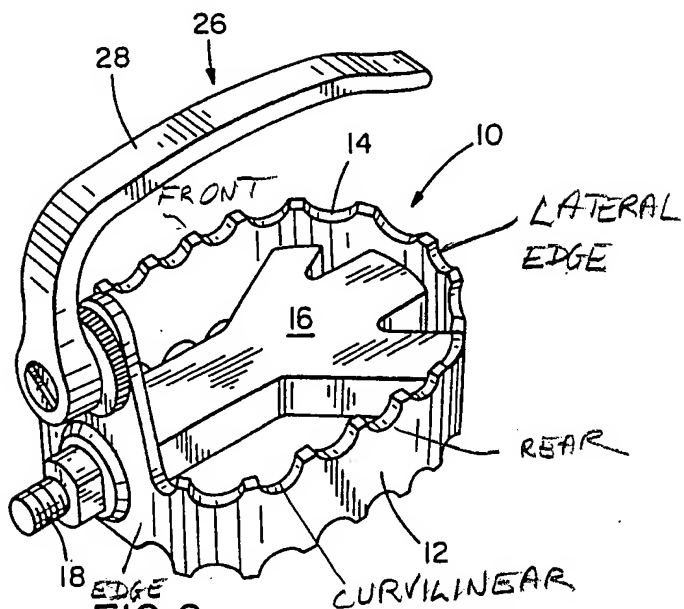


FIG. 2

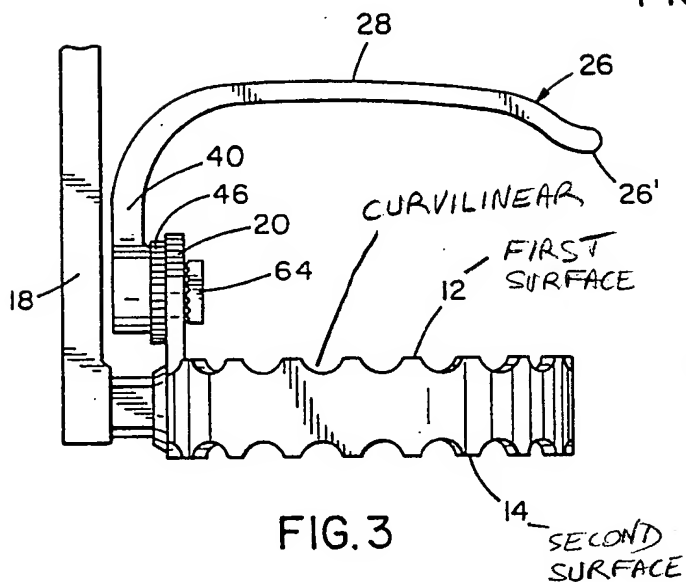


FIG. 3

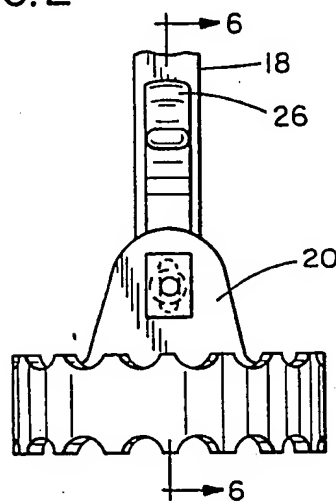


FIG. 4

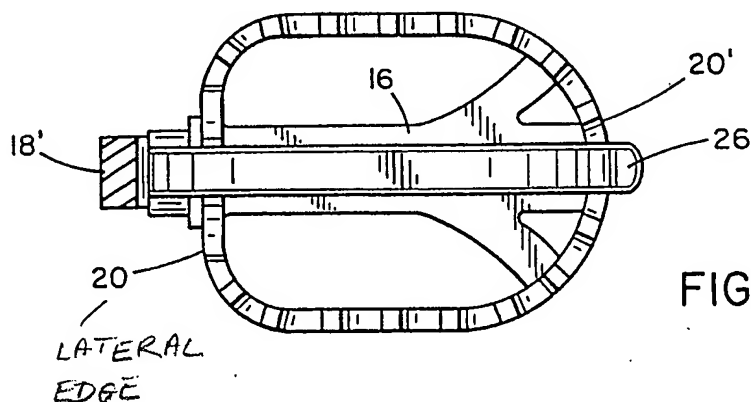
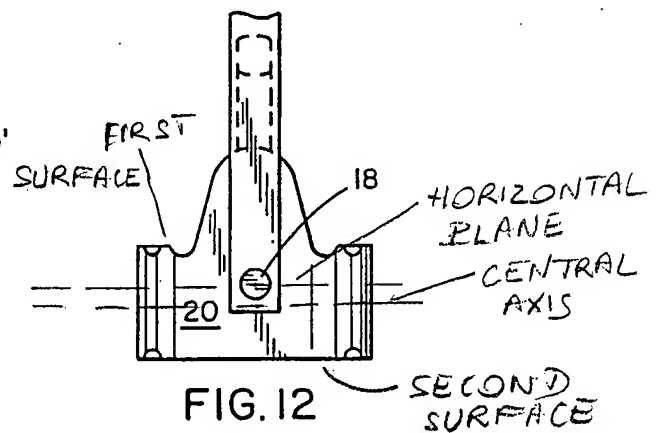
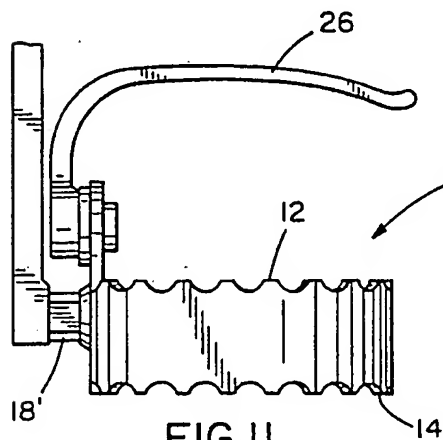
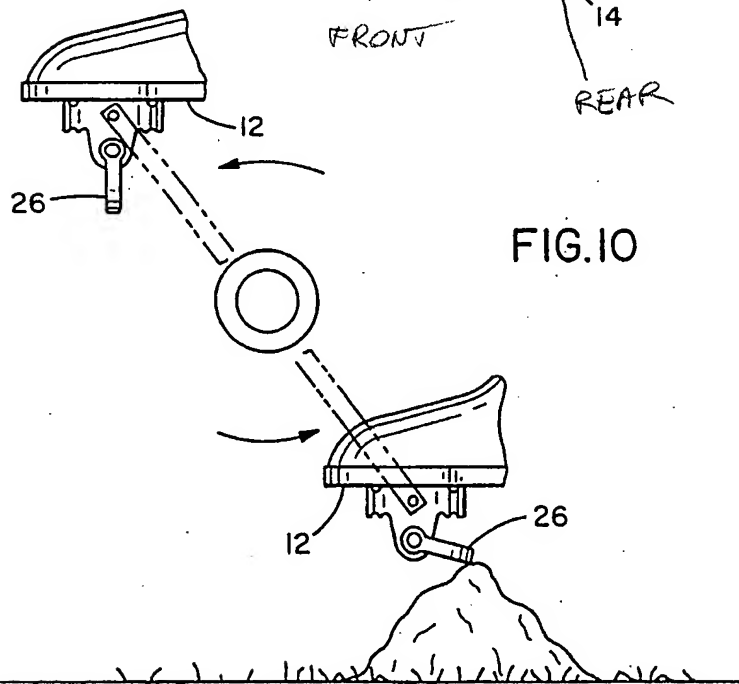
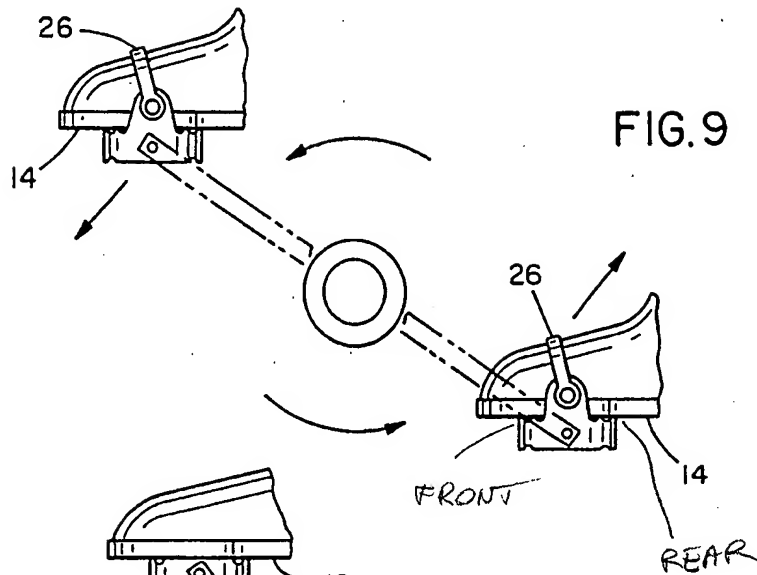
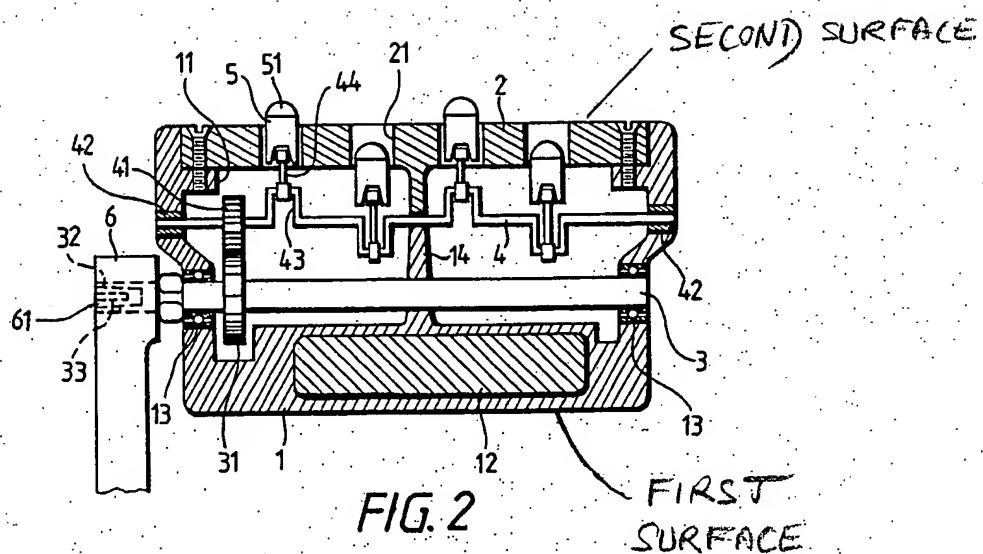
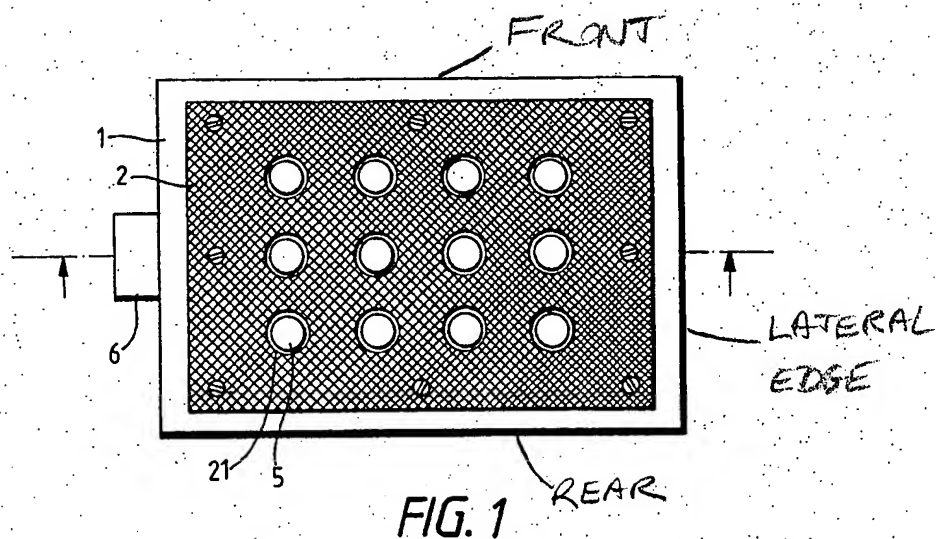
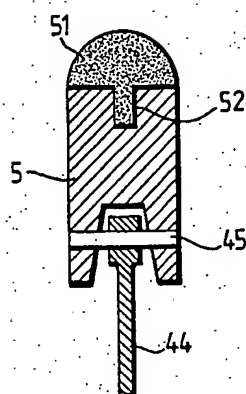
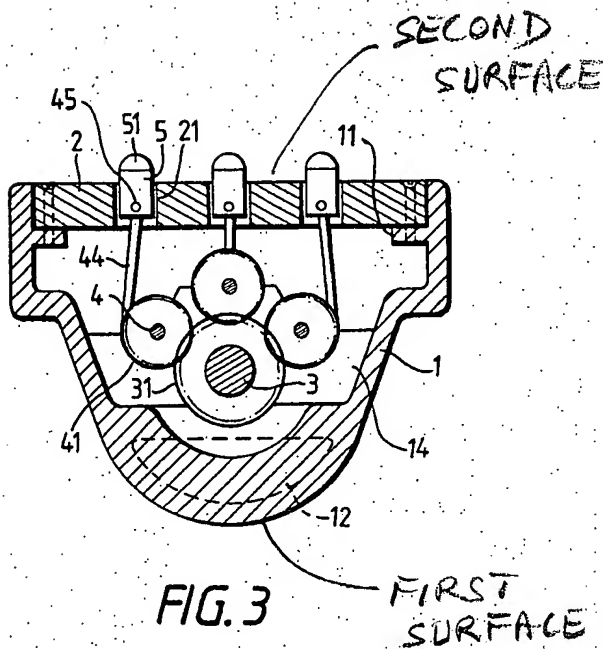


FIG. 5



# **ATTACHMENT 3**





# **ATTACHMENT 4**

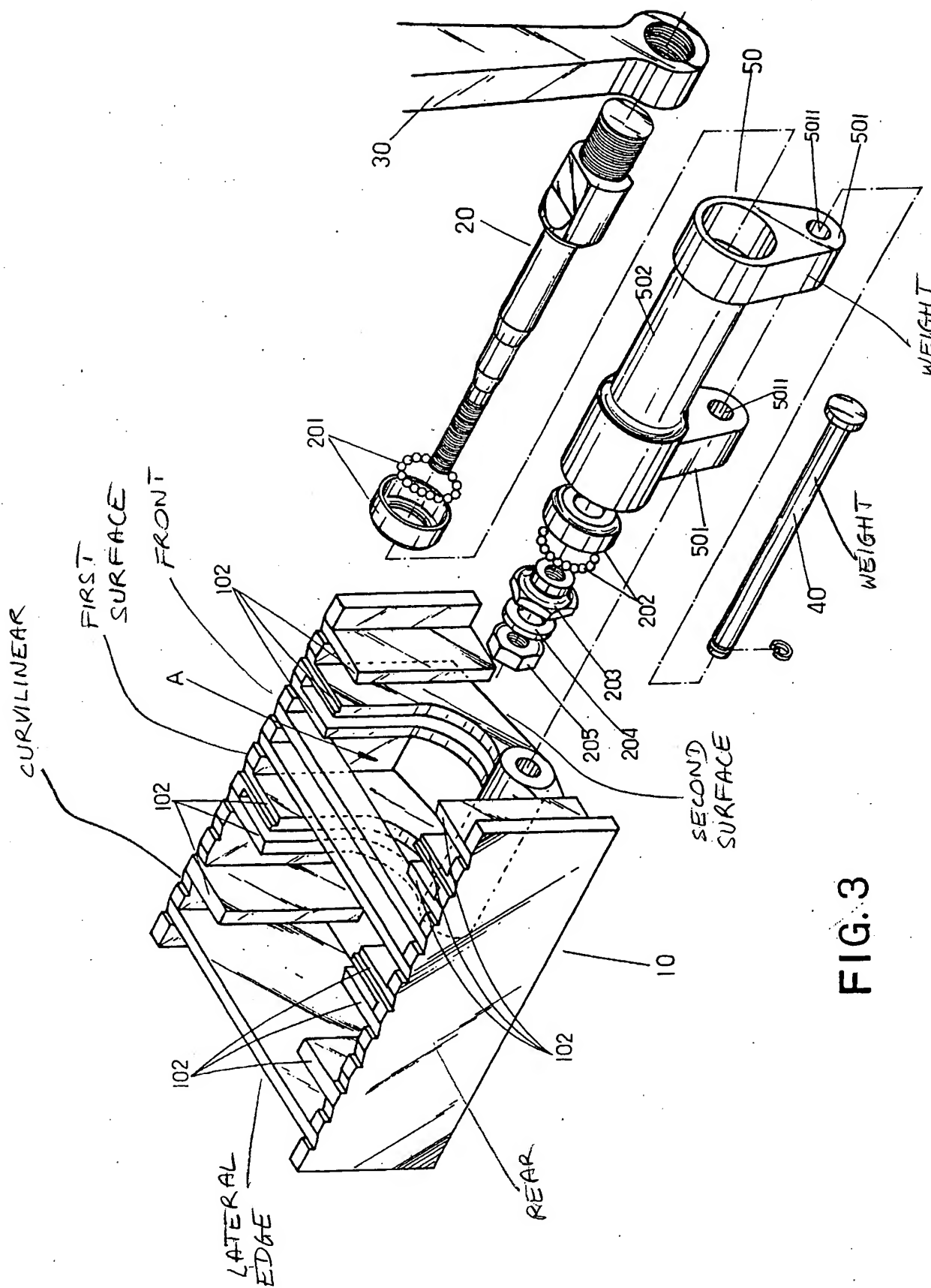


FIG. 3